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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

SENSITIVE

Pre-MUR 501
DATE SUBMITTED: 04/23/10
DATE ACTIVATED: 04/26/10
DATE OF INFORMATIONAL
MEMO TO COMMISSION: 9/1/10

EXPIRATION OF SOL: 10/15/11-01/31/14

SOURCE:

Sua Sponte Submission

RESPONDENT:

United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and
Service Workers International Union

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434(a)(4)(A)(i)
2 U.S.C. § 434(a)(4)(A)(ii)
2 U.S.C. § 431(9)(B)(iii)
11 C.F.R. § 104.6(b)

INTERNAL REPORTS CHECKED:

FEC Database

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter was initiated by a *sua sponte* submission ("Submission") filed on behalf of United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW") (also referred to as "Respondent"). After conducting an extensive internal review, USW concluded that it had failed to timely file Form 7s reporting membership communications costs of \$14,915 in 2006 and \$559,186 in 2008 in violation of 2 U.S.C. §§ 434(a)(4)(A)(i) and (ii) and 431(9)(B)(ii). Respondent represents that it has acted both to remedy its violations to the extent possible by filing the Form 7 reports, and to take corrective steps in order to prevent future similar violations.

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Based on these facts and circumstances, Respondent requests that the Commission pursue this matter through Fast-Track Resolution ("FTR") pursuant to the Commission's *sua sponte* policy, 72 Fed. Reg. 16,695 (Apr. 5, 2007), prior to any formal findings by the Commission or, alternatively, pursue this matter through Alternative Dispute Resolution ("ADR"). In light of the Respondent's prompt and thorough disclosure of the violations upon discovery, we engaged in the FTR process in this matter and recommend that the Commission accept the attached negotiated conciliation agreement and close the file. See Fast-Track Resolution Memo to Commission dated September 1, 2010.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Summary

USW, founded in 1942, is the largest industrial labor union in North America and is headquartered in Pittsburgh, Pennsylvania. It represents workers in the United States, Canada, and the Caribbean. USW is divided administratively into thirteen geographic districts, ten in the United States and three in Canada.

In the 2004 election cycle, USW incurred costs for membership communications, and submitted Form 7 reports covering reportable costs in the 2004 election cycle. However, it took no administrative steps during 2006 and 2008 to formalize a process to identify, track, and report membership communication spending. As a result, no responsible official or staff employee who could have assembled the pertinent financial information and prepared Form 7s either recalled or was alerted during 2006 and 2008 that the same kind of reports filed during 2004 might also be due in either of those subsequent years.

1 1. Discovery of Violations

2 According to the Submission, USW became aware of its Form 7 filing obligations in
3 November 2009, when the accounting staff consulted Counsel on an unrelated matter regarding
4 its compliance with Internal Revenue Service ("IRS") reporting requirements. The consultation
5 led to a broader conversation about USW compliance with both IRS and FEC reporting
6 requirements which ultimately led to the discovery that it had not filed the appropriate Form 7s
7 for 2006 and 2008 as required by 2 U.S.C. §§ 431(9)(B)(iii) and 434(a)(4)(A)(i) and (ii). In
8 December 2009, Counsel contacted the FEC to advise it of the discovery of the filing lapses.

9 Thereafter, USW conducted a search of its records and interviewed all relevant available
10 personnel in order to ascertain, to the extent possible, the nature of its expenditures on
11 membership communications that should have been reported. On April 23, 2010, USW filed
12 five Form 7s reporting \$14,915 for 2006 (\$11,535.81 – 2006 October Quarterly Report and
13 \$3,379.20 – 2006 12 Day Pre-General Report); and \$519,113 for 2008 (\$279,655.73 – 2008 July
14 Quarterly, \$152,254.45 - 2008 12 Day Pre-General, and \$87,203.02 – 2008 Year End).

15 2. Reportable Membership Communications Not Included on Form 7s

16 The Submission also identified two categories of reportable membership communication
17 costs incurred during the 2008 primary and general election periods, live telephone calls and
18 temporary workers, for which USW was initially unable to provide a reasonable approximation
19 because the information was no longer available.¹ Submission at 3-4. As a result, USW
20 represented that it was unable to determine production costs, distribution costs, or the details
21 regarding dissemination of these particular membership communications, except in one instance

¹ According to USW, all of the electronic scripts referencing a candidate that remain in its possession were included with its Submission. See Submission at Attachment 5.

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1 involving telephone calls made to USW members using its predictive dialer system.²

2 Submission at 3-4; and Attachment 6.

3 a. Costs Associated with Telephone Calls

4 Although USW was unable to reconstruct the content or volume of telephone calls due to
5 the deletion of virtually all of the scripts used in conjunction with the predictive dialer system
6 during the 2008 election, it is certain that one use of this system occurred in January 2008, in
7 connection with the express advocacy calls to its members in support of then-presidential
8 candidate John Edwards. *Id.* at 4. USW's records reflect that it hired temporary employees for
9 the exclusive purpose of making these calls, and their total compensation was \$4,102.50. *Id.*
10 Although this amount was not initially included in the reports filed in conjunction with the
11 Submission, USW has conceded that this amount is reportable and will report the activity.

12 After follow-up discussions with our office, USW determined that it was also able to
13 approximate the personnel costs associated with the federal candidate express advocacy calls
14 made from September 2008 to November 3, 2008, at \$33,293.20. Although USW states, through
15 its counsel, that it has no other existing documentation to rely upon for the approximation, it
16 conferred with staff members working during the 2008 election cycle and can state with
17 reasonable likelihood that the calls made from September 2008 to November 3, 2008, were
18 primarily related to federal candidate express advocacy. Thereafter, on June 24, 2010, USW
19 amended its reports to include the membership communication costs totaling \$40,060.75.³

² A predictive dialer system is a computerized system that automatically dials batches of telephone numbers for connection to agents assigned to sales or other campaigns.

³ USW provided an initial approximation of \$37,395.70 (\$33,293.20 – 2008 general election activity + \$4,102.50 – 2008 primary election activity, as discussed above). After further review, USW slightly adjusted those figures in its June 24, 2010, amended filings. The amendments include the following activity: (\$4,102.50 – 2008 April Quarterly (John Edwards predictive dialer calls) + \$9,147.32 – 2008 October Quarterly (personnel costs associated with

1 b. Costs Associated with Temporary Workers

2 The second category of expenses is associated with USW's use of temporary employees
3 during 2006 and 2008 who performed a variety of tasks, including assisting with membership
4 communications on federal and state electoral and issue matters. USW states that it did not
5 maintain any records that would enable it to attribute particular tasks or percentages of tasks to
6 those employees, let alone tasks in connection with communications that are subject to reporting
7 on Form 7. Submission at 4. After further discussion with USW, Counsel concluded that USW
8 was unable to estimate the reportable activity in connection with its use of the temporary
9 employees because it lacked records detailing the activities performed or membership
10 communications distributed.⁴ We are satisfied that USW has made reasonable efforts to
11 approximate these costs, but cannot do so because it lacks documentation.

12 **B. Legal Analysis**

13 Respondent self reports that it violated 2 U.S.C. §§ 431(9)(B)(iii) and 434(a)(4)(A)(i)
14 and (ii) when it failed to timely file Form 7s in connection with costs associated with
15 membership communications containing federal candidate express advocacy disseminated
16 during the 2006 and 2008 election cycle. The Federal Election Campaign Act of 1971, as
17 amended ("the Ant"), states that the term "expenditure" does not include any communication by
18 any membership organization or corporation to its members, stockholders, or executive or
19 administrative personnel, if such membership organization or corporation is not organized
20 primarily for the purpose of influencing the nomination for election, or election, of any

predictive dialer calls) + \$9,089.17 – 2008 12 Day Pre-General (personnel costs associated with predictive dialer calls) + \$17,721.76 – 2008 Year End (personnel costs associated with predictive dialer system calls)).

⁴ In addition, Counsel provided that the employees in the second category "did not work at the national USW office, but in various locations in many states, were not always under the direct supervision of national USW personnel, and often worked alongside USW members who were volunteering their time for various union-related activities."

1 individual to Federal office, except that the costs incurred by a membership organization
2 (including a labor organization) that are directly attributable to a communication expressly
3 advocating the election or defeat of a clearly identified candidate (other than a communication
4 primarily devoted to subjects other than the express advocacy of the election or defeat of a
5 clearly identified candidate) shall, if such costs exceed \$2,000 for any election, be reported to the
6 Commission in accordance with 2 U.S.C. § 434(a)(4)(A)(i) of this title, and in accordance with
7 2 U.S.C. § 434(a)(4)(A)(ii) of this title with respect to any general election. 2 U.S.C.
8 § 431(9)(B)(iii); 11 C.F.R. § 104.6.⁵

9 USW violated 2 U.S.C. §§ 431(9)(B)(ii) and 434(a)(4)(A)(i) and (ii), because, once it
10 exceeded the aggregate of \$2,000 per election, it failed to report costs that were directly
11 attributable to membership communications advocating the election and defeat of federal
12 candidates during election years 2006 and 2008.

13 **III. PROPOSED CONCILIATION**

14 As noted in the Fast-Track Resolution Memo circulated to the Commission on September
15 1, 2010, we have processed this matter through "FTR," by which a respondent, meeting
16 applicable criteria, may proceed directly into conciliation prior to a reason to believe finding.⁶

⁵ The Act requires that in a calendar year in which a regularly scheduled general election is held, a membership organization that incurs such reporting obligations must file a Form 7 report for the pertinent quarter no later than the 15th day after the last day of the quarter: except the report for the quarter ending on December 31 of such calendar year shall be filed no later than January 31st of the following calendar year. 2 U.S.C. § 434(a)(4)(A)(i). The Act also requires that a membership organization that incurs reporting obligations between October 1st and the 20th day before the general election must file a pre-election report no later than the 12th day before (or posted by certain prescribed means no later than the 15th day before) that election which is complete as of the 20th day before the election. 2 U.S.C. § 434(a)(4)(A)(ii).

⁶ Although there is some unreported activity due to USW's lack of records as discussed above, we are satisfied that USW has exhausted all reasonable means to provide the best approximations but is unable to do so. Therefore, we conclude that the criteria have been substantially met. USW has given assurances that it has established procedures to prevent a recurrence of this type of situation in the future. In addition, it has corrected the public record, to the extent possible, by filing Form 7s including activity for which it has documentation.

Pre-MUR 501 (USW)
First General Counsel's Report

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**Pre-MUR 501 (USW)
First General Counsel's Report**

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We recommend accepting the attached Fast-Track Resolution conciliation agreement signed by Respondent.

IV. RECOMMENDATIONS

- 1) Open a MUR;
- 2) Accept the attached Conciliation Agreement with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union prior to a finding of reason to believe;
- 3) Approve the appropriate letter; and
- 4) Close the file.

Nov. 18, 2010
Date

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